No. 92-732

SUPREME COURT, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM

GULF STATES STEEL, INC. OF ALABAMA,
Petitioner,

v.

THE LTV CORPORATION, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF OF PETITIONER

SUSAN G. BRADEN
Counsel of Record
1001 Pennsylvania Avenue, N.W.
Suite 1200 South
Washington, D.C. 20004
(202) 626-3968

BETTY SOUTHARD MURPHY
BAKER & HOSTETLER
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036
(202) 861-1500

RICHARD T. CUNNINGHAM
AMER CUNNINGHAM BRENNAN
159 South Main
Society Building, 6th Floor
Akron, Ohio 44308
(216) 762-2411

Counsel for Petitioner

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Balmar Legal Publishing Services, Washington, D.C. (202) 682-9800

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Petitioner Gulf States Steel, Inc. of Alabama ("GSSI")[1] submits this Reply Brief, pursuant to Rule 15.6 of this Court, to address an argument raised for the first time in the November 16, 1992 Brief for Respondents in Opposition ("Opposition") to GSSI's October 26, 1992 Petition for A Writ of Certiorari ("Petition").[2]

[1] GSSI has no parent companies or subsidiaries to report under Rule 29.1 of this Court.

[2] References to the Opposition are designated as "Opp. at ___," references to the Petition are designated as "Pet. at ___," and references to the Appendix to the Petition are designated as "Pet. App. ___, at ___a."

As set forth in the Petition, an antitrust consent decree was negotiated in 1984 to allow LTV to consummate the acquisition Republic Steel Corporation. *See* Pet. App. I, at 93a. The consent decree required LTV to promptly divest two steel mills, one of which was the Gadsden plant that is the subject of these proceedings, and provided for the appointment of a trustee who would have the power to require LTV to retain and assume all liabilities at the Gadsden plant upon the divestiture. *See id.*, at 95a-100a. After completion of the proceedings under the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (1988) ("Tunney Act"), the District Court determined that the consent decree was in "the public interest," as required by the Tunney Act, and entered it as a Final Judgment on August 2, 1984. Pet. at 4-6.

Respondents (collectively "LTV") have asserted that GSSI did not argue to the Court of Appeals that LTV sought — and which the Court of Appeals improperly granted — a modification of the 1984 antitrust consent decree, entered as the August 2, 1984 Final Judgment of the United States District Court for the District of Columbia ("District Court"), without complying with the procedures and substantive standards required by Fed. R. Civ. P. 60(b). Opp. at 6-7. In suggesting that this issue was not raised below, LTV creates a false dichotomy between the August 2, 1984 Final Judgment and the January 31, 1986 Asset Purchase Agreement, and ignores the substance of GSSI's arguments to the Court of Appeals.

Contrary to LTV's contention, GSSI's brief before the Court of Appeals began its argument by stating that LTV's adversary action sought "to avoid enforcement of the terms of the 1984 Final Judgment." Final Brief of Defendant-Appellee at 19.[3] GSSI further argued that the August 2, 1984 Final

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See Pet. App. I at 93a,106a. The trustee appointed by the District Court to effect the divestiture rejected LTV's objections to the Final Judgment, and the District Court, on December 17, 1985, entered a divestiture order on the terms recommended by the trustee. *See* Pet. App. K, at 113a. In its December 17, 1985 Order, the District Court specifically required that any amendments to the Asset Purchase Agreement that were "*material to the viability*" of the Gadsden Plant had to be approved by the Department of Justice. *See id.* at 114a (emphasis added).

On January 31, 1986, GSSI made a promissory note to LTV to purchase assets of the Gadsden plant. Pet. at 7. In return, LTV agreed to be bound by the Asset Purchase Agreement, executed on the same day, that specifically incorporated by reference LTV's obligation under the Final Judgment to retain and assume all liabilities at the Gadsden plant as of the date of closing. Pet. at 7-8.

[3] *See also* May 13, 1991 Memorandum of Points and Authorities in Support of GSSI's Motion to Deposit Certain Monies Subject To and Pending Further Orders of [The District] Court; May 24, 1991 Memorandum of Points and Authorities in Support of [GSSI's] Motion to Enforce [The District]

Judgment, the acts of the District Court's trustee, and the District Court's divestiture orders, combined, effectuated the divestiture that the District Court held — and LTV agreed — was in "the public interest." *Id.* GSSI also argued strenuously that LTV's objective in this case was to "relitigate issues that were settled in the antitrust divestiture proceeding." *Id.* at 19-21. This Court has held that relitigation of settled issues is an improper use of the procedures for modifying consent decrees. *See Rufo v. Inmates of Suffolk County Jail*, 112 S. Ct. 748, 763 (1992).

GSSI further argued to the Court of Appeals that LTV's attempt to avoid its obligation to retain and assume environmental liabilities would "modify the terms of the Final Judgment without requiring LTV to satisfy its burden to demonstrate how such a modification would be 'in the public interest.'" Final Brief of Defendant-Appellee at 26. GSSI added that LTV's attempted modification of the August 2, 1984 Final Judgment and the December 17, 1985 divestiture order required a finding by the Department of Justice that allowing LTV to avoid its environmental liabilities "was not material to the viability of the Gadsden Plant." *Id.* The absence of such a finding by the Department of Justice or the District Court barred the Court of Appeals from modifying the August 2, 1984 Final Judgment. *Id.* Accordingly, LTV's attempt to modify the consent decree, which the Court of Appeals allowed, was squarely argued below and is properly before this Court.[4]

Court's Orders and In Opposition to LTV's Motion for Summary Judgment; Transcript of May 14, 1992 Oral Argument before the Court of Appeals; and, May 13, 1992 Post-Argument Memorandum of Supplemental Authorities of Defendant-Appellee.

[4] Because the remaining arguments contained in LTV's Opposition consist principally of summary denials of contentions set forth in GSSI's Petition, those arguments need not be addressed herein. LTV, however, has mischaracterized GSSI's argument concerning the District Court's escrow deposit order. *Compare* Pet. at 20-26 *with* Opp. at 10-13. Perhaps as a result of its focus on erroneously describing GSSI's argument, LTV does not take exception to GSSI's argument that the District Court had the inherent power

LTV is no novice at attempting to avoid environmental obligations by invoking the bankruptcy laws. *See In re Chateaugay Corp.*, 944 F.2d 997 (2d Cir. 1991). This case, however, presents an obstacle that LTV cannot overcome because it voluntarily agreed to exempt these environmental obligations at the Gadsden plant from the scope of the bankruptcy laws. LTV properly was required to retain and assume its environmental obligations to permit the Gadsden plant to become a viable competitor, as the public interest *quid pro quo* for its acquisition of Republic Steel. *The Court of Appeals, however, relieved LTV of its responsibility and saddled the new entrant, GSSI, with LTV's liabilities — without showing whether and how such action promotes either the competitive or subsumed environmental policy objectives of the consent decree.* If LTV is successful, this case will serve as a model for other defendants who now may find it too burdensome to comply with court orders entered to enforce the antitrust and environmental laws, as well as other laws of this nation. As this Court held in *Rufo*: "Rule 60(b)(5) provides that a party may

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to accept the escrow deposit, wholly apart from Fed. R. Civ. P. 67. *Compare* Pet. at 22-23 *with* Opp. at 10. In addition, LTV does not contest the unduly harsh result of the *retroactive* application of the Court of Appeals' ruling. *Compare* Pet. at 24-26 *with* Opp. at 11-12.

Despite LTV's attempts to minimize the significance of the precedential effect of the Court of Appeals' ruling, *the D.C. Circuit stands alone as the only federal court that has held the termination of the accrual of default interest upon deposit to be an abuse of discretion, and is the only federal court to impose default interest retroactively on a litigant who reasonably relied upon a district court's power to use the "safe harbor" provided by Rule 67 while litigation ensued.* Contrary to LTV's assertions, Opp. at 12-13, this Court's review is necessary to reopen this "safe harbor," to redress the injustice imposed upon GSSI, and to ensure that the federal courts [redacted] force litigants to take risks that "simply do not pay off."

obtain relief from a court order when 'it is no longer equitable that the judgment should have prospective application' *not when it is no longer convenient to live with the terms of a consent decree*." 112 S. Ct. at 760 (emphasis added).

This Court should review this case to ensure that the Court of Appeals' decision does not become precedent and that this Court's holding in *Rufo* regarding the standards for consent decree modification under Fed. R. Civ. P. 60(b) is made applicable to appropriate noninstitutional reform cases as well. *See id.*

Respectfully submitted,

SUSAN G. BRADEN
Counsel of Record
1001 Pennsylvania Avenue, N.W.
Suite 1200 South
Washington, D.C. 20004
(202) 626-3968

BETTY SOUTHARD MURPHY
BAKER & HOSTETLER
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036
(202) 861-1500

RICHARD T. CUNNINGHAM
AMER CUNNINGHAM BRENNAN
159 South Main
Society Building, 6th Floor
Akron, Ohio 44308
(216) 762-2411

Counsel for Petitioner